HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.16547 OF 2006

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Between:

The A.P. Co-op. Housing Society Federation Limited,
Bagh Lingampally, Hyderabad rep. by its Managing Director
B.Gopal Naik S/o Lok Nayak, R/o Hyderabad.

…Petitioner

A n d

The A.P. State Consumer Disputes Redressal Commission,
Hyderabad, A.P and others

…Respondents

:: **O R D E R** ::

Counsel for petitioner : Sri T.Srikanth Reddy

Counsel for respondents : Government Pleader for Civil Supplies

9th August 2006

Per G.V.Seethapathy, J

This writ petition has been filed seeking a writ of Certiorari calling for the records relating to F.A.No.277 of 2006 and quash order dated 31.03.2006 passed by the 1st respondent-A.P. State Consumer Disputes Redressal Commission, Hyderabad.

The third respondent herein (Complainant before the District Consumer Forum, Chittoor) borrowed a sum of Rs.27,500/- from the second respondent-Cooperative Building Society under loan No.83 and deposited a sum of Rs.2,300/- towards share capital as also the original sale deed dated 6.4.1979, approved plan and other documents. She repaid the entire loan amount due to the Society about two years back and the Society issued `No due Certificate' on 15.10.2004. When the complainant approached the Cooperative Building Society seeking return of the documents and share capital amount, she was asked to pay some more amount. As the documents were not returned to her, she approached the District Consumer Forum, Chittoor (for short, the District Forum) complaining deficiency of service. The same was registered as C.D.22 of 2005.

The second respondent-Society took the stand that it is not having custody of the documents and the petitioner herein, i.e., A.P. Cooperative Housing Society Federation Limited (for short, the Federation) alone is responsible for return of the documents and hence there is no deficiency in service on the part of the Society.

The petitioner-Federation did not file any written statement before the District Forum.

By an order dated 7.1.2006, the District Forum allowed C.D.22 of 2005 and directed the petitioner and second respondent herein to return the sale deed dated 6.4.1979 and other documents submitted by the complainant and also refund the amount of Rs.2,300/- being the share capital with interest at 9% P.A from 15.10.2004 till realization together with compensation of Rs.3,000/-.

The petitioner-Federation preferred an appeal before the A.P. State Consumer Disputes Redressal Commission (for short, the State Commission), which was dismissed on 31.3.2006. However, six weeks time was granted for compliance of the directions given by the District Forum.

Learned counsel for the petitioner invited our attention to the averments contained in the affidavit filed by Sri B.Gopal Naik, Managing Director of the Federation and argued that the directions given by the District Forum for return of the documents to the complainant and for payment of compensation to her should be declared as illegal and the orders under challenge may be quashed because the third respondent has not cleared the outstanding dues amounting to Rs.28,548/-. He then argued that the District Forum does not have the jurisdiction to entertain the complaint, which essentially raised a civil dispute.

In our opinion, there is no merit in either of the arguments. Admittedly, the Federation did not file any reply to controvert the averments contained in the complaint filed by the third respondent. In the counter filed by the second respondent, it was not disputed that the

third respondent had paid the entire amount and `No Due Certificate' has been issued to her. Therefore, the District Forum did not commit any illegality when it directed return of the documents to the complainant (third respondent herein) and payment of compensation to her. For the first time, the petitioner raised the plea of arrears in the appeal filed before the State Commission. However, in the face of admission made by the second respondent that it had received the amount deposited by the third respondent, the Federation was not justified in withholding the title deeds and other documents. The dispute, if any, between the petitioner-Federation and the second respondent cannot justify withholding of the documents of the third respondent. The complainant-the third respondent herein, has nothing to do with the internal squabbles, if any, between the petitioner-Federation and second respondent-Society in the matter of settlement of accounts interse between them. A borrower is certainly entitled for return of the title deeds by way of release from security when once the dues are cleared and no due certificate is also issued.

The plea of the second respondent society has been that physical custody of the documents is with the petitioner-Federation which alone has to return them. The failure of the petitioner-Federation, which is admittedly having custody of the documents, to return them to the complainant even after repayment of the entire loan amount is totally unjustifiable. Such failure would certainly amount to deficiency in service within the meaning of the Consumer Protection Act.

The argument of the learned counsel that the complaint filed by the third respondent gave raise to a civil dispute is without substance. There is no dispute regarding repayment of the loan inasmuch as the

second respondent society has admittedly issued no due certificate on repayment of entire loan amount by the complainant. What remained thereafter is only return of the title deeds by way of release from security, which had to flow as a natural corollary to the repayment of the entire loan amount. As withholding of the documents for no justifiable reason amounted to deficiency in service, the District Consumer Forum as well as the State Consumer Disputes Redressal commission are certainly having jurisdiction to deal with the matter under the provisions of the Consumer Protection Act. In fact, Section 3 of the Act is couched in such wide terms that the remedies under the Act are in addition to and not in derogation of any other law for the time being in force. The resort to the provisions of the Act in the factual matrix of the present case made by the complainant cannot be questioned and the orders passed by the District Forum or the State Commission cannot be challenged as being without jurisdiction.

For the reasons stated above, the writ petition is dismissed. No order as to costs.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

9th August 2006
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HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

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(Order of the Bench made by
Hon'ble Sri Justice G.V.Seethapathy)

DATED : 09.08.2006